

SUPREME COURT, U. S.

No. 755

FILED
MAR 28 1968

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1967

FIRST AGRICULTURAL NATIONAL BANK OF
BERKSHIRE COUNTY,
Appellant,

v.

STATE TAX COMMISSION,
Appellee.

On Appeal From The Supreme Judicial Court
For The Commonwealth Of Massachusetts

MOTION OF THE NATIONAL ASSOCIATION OF
SUPERVISORS OF STATE BANKS FOR
LEAVE TO FILE A BRIEF AS AMICUS CURIAE

JAMES F. BELL
BRIAN C. ELMER
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for Movant

Of Counsel:

REAVIS, POGUE, NEAL & ROSE



IN THE
Supreme Court of the United States

OCTOBER TERM, 1967

No. 755

FIRST AGRICULTURAL NATIONAL BANK OF
BERKSHIRE COUNTY,

Appellant,

v.

STATE TAX COMMISSION,

Appellee.

**MOTION OF THE NATIONAL ASSOCIATION OF
SUPERVISORS OF STATE BANKS FOR
LEAVE TO FILE A BRIEF AS AMICUS CURIAE**

The National Association of Supervisors of State Banks (hereinafter called the "Supervisors") is an association composed of the officials of state governments responsible for the supervision of state-chartered banking institutions in every state of the United States and in Puerto Rico and the Virgin Islands. As of June 30, 1967, its fifty-two members supervised 9487 commercial and mutual savings banks chartered under state law with total assets in excess of 237 billion dollars.

The question before the Court in this case is whether or not the State of Massachusetts may impose a general sales and use tax on a national bank.

The decision of the Court will, however, affect the banking structure in every state in the United States.

Simply stated, there is a congressionally created dual-banking system in this country.¹ Of the more than 14,000 banks, approximately 66% are chartered and supervised by the states ("state banks") while 34% are chartered and supervised by the federal government ("national banks").

The Supervisors have taken an active role both before the courts² and the Congress in matters which involve the basic strengths of this system, i.e., the ability of both national and state banks to compete effectively. The question now before this Court—whether national banks can escape nondiscriminatory taxation imposed upon state banks—is obviously one which vitally affects the ability of state banks to compete with national banks.

The Supervisors believe they can assist this Court in two specific areas: (1) by providing a history of the dual-banking system in the United States which places in perspective the role of state and national banks in relation to the federal government, and (2) by evaluating and presenting to the Court the nation-wide effect which the decision in this case will have upon the dual-banking system.

These are areas which by virtue of the parties individual interests—the appellant national bank in avoiding tax

¹ See *First Nat'l Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252 (1966).

² For example, the Supervisors filed a brief to this Court as amicus curiae in *Whitney Nat'l Bank v. Bank of New Orleans*, 379 U.S. 411 (1965), to the 5th Circuit in *Jackson v. First Nat'l Bank of Valdosta*, 349 F.2d 71 (1965), and to the 10th Circuit in *Walker Bank & Trust Co. v. Saxon*, 352 F.2d 90 (1965).

liability and the appellee tax commission in broadening the state's tax base—are unlikely to be presented to the Court absent the participation of the Supervisors. Further, because of their responsibility of regulating more than half of the banks in the United States, Puerto Rico, and the Virgin Islands, the Supervisors are uniquely fitted to supply this broader framework for the Court's decision.

Finally the Supervisors have an interest distant from that of the parties. They have the responsibility to see that the banks they regulate are not only financially sound but are able to adequately serve the needs of their communities. To the extent that state banks are required to compete with other banks that are immune from taxation this foundation is compromised. No party before this Court can reasonably be expected to represent this vital public interest.³

³ In a recent case involving the construction of Section 36 of the National Bank Act, 12 U.S.C. § 36, the United States Court of Appeals for the District of Columbia Circuit held that "where protection of the competitive equality of state banks is the core of the federal statute controlling the branching of national banks, a state banking commissioner has an adequate interest in the construction of the federal act to justify intervention." *Nuesse v. Camp*, 385 F.2d 694, 701 (1967). It has also been held that state bank supervisors have the standing to bring suit to challenge actions of the Comptroller of the Currency in authorizing a branch which would, in the Supervisor's view, be an unlawful action having an adverse competitive effect upon state banks subject to his jurisdiction. *Jackson v. First National Bank*, 349 F.2d 71 (5th Cir. 1965).

CONCLUSION

For the foregoing reasons, the National Association of Supervisors of State Banks requests that its motion for leave to file a brief as amicus curiae be granted.

Respectfully submitted,

JAMES F. BELL

BRIAN C. ELMER

1100 Connecticut Avenue, N.W.

Washington, D.C. 20036

Attorneys for Movant

Of Counsel:

REAVIS, POGUE, NEAL & ROSE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this Motion and the Brief of the Association upon counsel for the parties by mailing copies thereof, with first class postage affixed, to:

John P. Weitzel, Esquire

Herrick, Smith, Donald, Farley & Ketchum

294 Washington Street

Boston, Massachusetts 02108

for First Agricultural National Bank

Alan J. Diamond, Esquire

State House

Boston, Massachusetts 02133

for State Tax Commission

Brian C. Elmer

March 29, 1968